

**Matthew and Shanna McCabe**

**v.**

**Town of Merrimack**

**Docket No.: 24000-08PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2008 assessment of \$353,100 (land \$85,100; building \$268,000) on Map 7E/Lot 046-45, a single family home on 0.124 acres (the “Property”). For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying a disproportionate share of taxes. See RSA 76:16-a; Tax 201.27(f); Tax 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayers must show the Property’s assessment was higher than the general level of assessment in the municipality.

Id. We find the Taxpayers failed to prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) they purchased the Property in April, 2008 for \$311,000;
- (2) the purchase was an arm’s-length transaction;

(3) a review of the selling prices of some properties in the same neighborhood compared to their assessments indicates the entire neighborhood is overassessed; and

(4) the proper assessment should be based on the Property's purchase price factored by the Town's level of assessment.

The Town argued the assessment was proper because:

(1) the Taxpayers' purchase of the Property should not be considered an arm's-length transaction because the Property was only on the market for 11 days and was priced to sell quickly;

(2) one sale does not provide an indication of the real estate market in general;

(3) several of the sales included in Taxpayer Exhibit No. 1 should not be considered arm's-length transactions because they were: a private transaction (sale from landlord to tenant), and relocation sales;

(4) a "comparable sales report" (Municipality Exhibit A) analyzing four sales (three of which were used by the Taxpayers) supports the assessment; and

(5) the Taxpayers' sole reliance on distressed sales leads to an opinion of value that is below market.

The parties stipulated the Town's level of assessment in tax year 2008 was 104.4%, the median ratio computed by the department of revenue administration.

### **Board's Rulings**

Based on the evidence, the board finds the Property is not disproportionately assessed.

Assessments must be based on market value as of the assessment date in each tax year.

See RSA 75:1. The Taxpayers contend their \$311,000 purchase price for the Property is a valid representation of the Property's market value. While the sale price can be some evidence of

market value, it is not necessarily conclusive evidence and the board has the discretion to evaluate and determine the reliability of the sale price as an indicator of market value. See, e.g., Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994); and Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980). Where it is demonstrated that the sale was an arm's-length transaction between knowledgeable parties, of course, the sale price is one of the "best indicators of the property's value." Appeal of Lakeshore Estates, 130 N.H. 504, 508 (1988). An arm's-length transaction is a transaction between unrelated parties under no duress. The common definitions of market value usually set out the criteria for an arm's-length sale in detail.<sup>1</sup> Here, however, the board finds there is sufficient evidence to find the Property's transfer to the Taxpayers may not have been an arm's-length transaction. First, the fact the Property was exposed to the real estate market for only 11 days before going under contract may indicate it was priced below market to facilitate a "quick" sale. Second, there was testimony at the hearing that the appraisal of the Property by the Taxpayers' lending institution estimated a higher market value than the purchase price. Although the Taxpayers did not refute this fact, they testified they could not recall exactly how much higher the appraisal's market value estimate was. For these reasons and the analysis of evidence below, the board finds the Taxpayers' purchase price for the Property is not a valid indicator of its market value.

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<sup>1</sup> A standard definition of what constitutes market value, formulated by The Appraisal Institute in The Appraisal of Real Estate 24 13th ed. (2008) is as follows:

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or well advised, and each acting in what he or she considers his or her own best interest; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in U. S. dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

In additional support of their position, the Taxpayers submitted the online “unofficial” assessment-record cards and the assessment histories for the Property and six comparable properties, located in the same neighborhood as the Property, which sold during the time period from 12 months before to 12 months after the April 1, 2008 effective assessment date (Taxpayer Exhibit No. 1). The Taxpayers asserted the significant discrepancies between the selling prices of the six properties and their assessed values is evidence the Property, in particular, and the neighborhood in general, is overassessed. For several reasons, the board finds the Taxpayers’ information contained in Taxpayer Exhibit No. 1 is not probative evidence the Property is disproportionately assessed. Several of the sales the Taxpayers used in Exhibit No. 1, as the Town pointed out, do not meet the criteria necessary to be considered arm’s-length transactions. “Referencing public records and data services does not verify a sales transaction. It simply confirms that a transaction was recorded. Similarly, referencing the source of secondary data only confirms its existence and does not verify the transaction. Generally, secondary sources do not provide adequate information about sales concessions, whether the sale was an arm’s-length transaction, if multiple properties were involved in the sale, if personal property was included, and other factors influencing value.” The Appraisal of Real Estate 305 13<sup>th</sup> ed. (2008). For instance, the Taxpayers made no adjustments to their comparables for date of sale, size of property or other features as the Town did in its comparable sales report.

The following is a brief review of each of the sales submitted in Taxpayer Exhibit No. 1:

- 4 Kinsman Lane – The grantor in this transaction is Prudential Relocation, Inc. and the Multiple Listing Service (“MLS”) listing sheet includes the phrases “fabulous resale” and “quick close possible.” Each of these phrases indicates this sale may not meet the criteria of an arm’s-length transaction due to the motivation of the seller. While the Town also used this

sale in its “comparable sales report” in Municipality Exhibit A, the Town acknowledged its research indicated the property was only on the market for 46 days and was sold due to relocation (a military transfer).

- 15 Monadnock Lane – The MLS listing sheet for this property lists it as being sold “as is” and “needs TLC.” It further states it is “priced to sell,” an indication the seller is not typically motivated. The Town also analyzed this sale noting the conditions listed and made an adjustment of \$20,000 to account for the cost to cure the issues noted. The Town further noted the Property was only on the market for seven days.

- 26 Crosswoods Path – The grantor in this transfer was Residential Funding Company, LLC. This suggests the sale may have been made after a foreclosure although no further details were provided.

- 27 Crosswoods Path – This property’s sale was a private transaction reached between a landlord and the tenant. No evidence was presented to show if this property was exposed to the open market or if any agreements were made between the landlord and tenant (i.e., lease with an option to buy, etc.) which would affect the arm’s-length nature of the sale.

- 19 Crosswoods Path – This property was only on the market for 58 days and may have been priced to sell quickly. The Town also used this sale in its analysis.

- 3 Kearsarge Lane – The grantor in this sale was CitiBank, NA as Trustee and was a sale after foreclosure. The board concurs with the Town’s testimony that banks operate with different motivations (i.e., reducing their portfolio) than typical buyers and sellers and thus, without other evidence regarding the transaction, the sale is not a good indicator of market value.

Given the economic climate during this time period, it was not unusual for properties which were professionally marketed to be for sale for an extended period of time, usually several

months to a year. However, several of the sales utilized by the Taxpayers sold within days or weeks of being put on the market. This is an indication that the sellers may not have been typically motivated.

The board finds the Town's analysis contained in Municipality Exhibit A is the best evidence in support of the Property's assessed value. The Town acknowledged there were few good, valid sales and, in its comparable sales report, compared the Property to four similar properties. The Town acknowledged it used three of the same sales the Taxpayers used, although none of the foreclosure sales, and further utilized the sale of 10 Windover Lane which is not in the same development as the Property. The Town made adjustments to the sales to adjust for market conditions (time) to the date of assessment, April 1, 2008, and to account for dissimilarities between the Property and the sales (i.e., neighborhood, size, condition, features). The board finds the Town's comparable sales report to be the best evidence of the Property's market value and thus finds the Taxpayers failed to prove the Property was disproportionately assessed. The appeal is therefore denied.

Any party seeking a rehearing, reconsideration or clarification of this Decision must file a motion (collectively "rehearing motion") within thirty (30) days of the clerk's date below, not the date this decision is received. RSA 541:3; Tax 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; Tax 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule Tax 201.37(g). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the

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rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Matthew and Shanna McCabe, 19 Kearsarge Lane, Merrimack, NH 03054, Taxpayers; Chairman, Board of Selectmen, Town of Merrimack, 6 Baboosic Lake Road, Merrimack, NH 03054; and Loren J. Martin, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: 1/19/11

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Anne M. Stelmach, Clerk